

# EXHIBIT H

# BILL OF COSTS HANDBOOK



This Handbook is provided by the Clerk's Office to assist parties in properly filing a Bill of Costs with this Court. Litigants are encouraged to review it thoroughly. The Handbook is NOT to be considered legal advice, nor should it be cited as legal authority. It is subject to exception and modification. Please use the Handbook in conjunction with the federal rules and the Local Rules of this Court.

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## BILL OF COSTS HANDBOOK

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## **I. TAXATION OF COSTS BY THE CLERK**

### **A. AUTHORITY**

Costs will be taxed by the clerk in accordance with Fed. R. Civ. P. 54(d)(1).

### **B. INTRODUCTION**

When a judgment is entered for a party in this Court, it may merely state that the party recover a sum certain with costs. These costs are not itemized at this point. Not every expense of litigation is recoverable. A party seeking costs must file a Bill of Costs no later than 28 days after entry of judgment (E.D. Mich. LR 54.1). It will be the duty of the Clerk, or the Clerk's designee, to tax all allowable costs.

After the taxation clerk has taxed costs, counsel for either side may, within seven days, file a motion to review the action of the taxation clerk and request review by the Court. Once the Court has ruled on the motion filed by any party, and the matter of costs has been determined, those costs are included in the judgment and should be paid directly to the prevailing party. These costs are not processed through the Clerk's Office. To record the payment, a notice of satisfaction of costs may be filed. If the parties settle costs before the taxation, counsel must file a stipulation stating the issue has been resolved.

The taxation clerk will tax costs even if the case is appealed, unless a stay pending appeal has been granted by the Court. However, if all parties prefer to postpone the taxation proceeding until the conclusion of all appellate proceedings, a notice advising the Court should be filed. **At the conclusion of all appellate proceedings, counsel must file notice that costs may now be taxed.**

### **C. BILL OF COSTS FORM AND REQUIREMENTS**

Before any costs are taxed, a properly completed Bill of Costs form (attached) must be filed. The form may be obtained from the Court's website at [www.mied.uscourts.gov](http://www.mied.uscourts.gov). A party claiming any item of costs of disbursement must submit an affidavit, made by himself or a duly authorized attorney or agent having knowledge of the facts, declaring that such item is correct, has been necessarily incurred in the case, and that the services for which fees have been charged were actually and necessarily performed. The Bill of Costs form contains the necessary affidavit.



The Bill of Costs should be filed electronically. **It is counsel's responsibility** to attach documentation to support the claims made as exhibits. Documentation may include receipts, orders and stipulations of the parties. Counsel must ensure that any receipts are self-explanatory (i.e., receipts for service shall include the names of the individuals, why they were served, where they were served, and the cost for service). **The taxation clerk will disallow any expenses that do not have itemized or supporting documentation.**

## **II. DISCUSSION OF TAXABLE COSTS**

**Counsel is responsible** for providing the required receipts, orders, stipulations or other documentation to support their Bill of Costs. Costs submitted without supporting documentation will be denied. The taxation clerk will review and tax costs in the following categories.

### **A. TAXABLE FEES OF THE CLERK**

1. Filing fee for a complaint, removal, or habeas corpus petition filed in federal court.
2. Fee charged by out-of-district federal courts for filing notice of taking deposition.
3. Appellate fees pursuant to Fed. R. App. P. 39(e).
4. An amount equal to the civil filing fee may be awarded to the United States when a judgment has been awarded in its favor.

Refer to Clerk's Office Fee Schedule at [www.mied.uscourts.gov](http://www.mied.uscourts.gov) for current filing fees.

### **B. FEES FOR SERVICE OF SUMMONS AND SUBPOENA**

1. **Taxable**
  - a. Service fees for summons and other initial process. (Fed. R. Civ. P. 4(c)(1))
  - b. Service fees for trial subpoenas for witnesses who **have** testified at trial.

- c. Service fees for deposition subpoenas of which the deposition transcript has been taxed as costs.
- d. Cost of postage if service is executed by mail.
- e. United States Marshal fees under 28 U.S.C. § 1921.

## **2. Not Taxable**

- a. Service fees for discovery subpoenas.
- b. Service fees for trial subpoenas if the witness **did not** testify.

## **C. FEES OF THE COURT REPORTER FOR ALL OR ANY PART OF THE TRANSCRIPT NECESSARILY OBTAINED FOR USE IN THE CASE**

Counsel must attach a copy of the Court's order directing the preparation of the transcript or the stipulation of parties agreeing to its preparation, if applicable, to the Bill of Costs. If a transcript was used in support of a motion, counsel is required to provide the taxation clerk with the title of the motion, the date it was filed, and, if available, the exhibit or attachment number. Excerpts of the deposition transcripts used in support of a motion should be attached as an exhibit to the motion. If not attached as an exhibit, counsel must provide the page number of the motion or brief where the transcript was referenced to be awarded costs. If the transcript was used at trial, the date the transcript was read into the record is to be noted on the supporting documentation. Costs will be denied without the supporting documentation.

### **1. Taxable**

- a. Transcript procured at direction of the Court.
- b. Transcript prepared under stipulation of parties to tax as costs.
- c. Transcript used at trial to impeach witness(es).
- d. Transcript used in support of a motion. (See Section C above.)
- e. Electronic media depositions used at trial, e.g., video tape, DVD, audio.
- f. Court reporter fees for attendance and travel for depositions.
- g. Court reporter postage or delivery charges.

- h. Costs of copies of papers obtained as exhibits in the deposition.
- i. Electronic media, e.g., disk, CD-ROM, DVD, external storage device.
- j. Transcripts ordered for appeal purposes.
- k. The cost of the transcript and one copy will be allowed, if the transcript is taxable under categories a - j above.

**Filing of all deposition material shall be only in written form. If audiotaped or videotaped, a written transcript will be accepted for filing. (E.D. Mich. LR 26.2(b)) It is the responsibility of counsel to ensure that the transcript is properly filed with the Court.**

**2. Not Taxable**

- a. Cost of daily or expedited copy produced solely for the convenience of counsel unless prior court approval is obtained.
- b. Transcript used primarily for trial preparation or discovery.
- c. Attorneys' fees and expenses incurred while taking a deposition.
- d. Long distance phone charges for telephonic depositions.

**D. FEES AND DISBURSEMENTS FOR PRINTING**

These fees and disbursements usually do not become involved in trial court proceedings. The Court of Appeals taxes these fees and disbursements and includes them in its mandate. These taxed costs are in addition to those recoverable in the trial court.

**E. FEES FOR WITNESSES**

If a witness is subpoenaed to the trial, but does not testify, or if a witness is deposed, but the transcript is not used at trial or in support of a motion, the taxation clerk **will not** tax the fees and disbursements as to that witness. (28 U.S.C. § 1821; 28 U.S.C. § 1920(3)) (Also refer to Fed. R. Civ. P. 45(b)(2))

Use the back of the Bill of Costs form to itemize the witness fees. The form will automatically fill in the total in Line E on the front of the Bill of Costs.

### **1. Taxable**

- a. Attendance, mileage and subsistence fees, if applicable. These costs are taxable only for the day(s) a witness testifies.
- b. Federal employees are **not** entitled to attendance fees, **but** may receive the mileage and subsistence allowance for overnight stays.
- c. Miscellaneous toll charges, taxicab fares between places of lodging and carrier terminals and parking fees.
- d. Common carrier fees at the most economical rate.

Per diem and mileage rates can be obtained at [www.gsa.gov](http://www.gsa.gov) . Current witness fee obtainable from Clerk's Office Fee Schedule at [www.mied.uscourts.gov](http://www.mied.uscourts.gov) .

### **2. Not Taxable**

- a. The expenses of witnesses who are themselves parties to the case. (*10 Wright, Miller and Kane, Federal Practice and Procedure, Civil 2d §2678 at 376 (2d Ed. 1983)*).
- b. Compensation paid to an **expert** witness **in excess** of the statutory fees.

## **F. FEES FOR EXEMPLIFICATION AND COPIES OF PAPERS OBTAINED FOR USE IN THE CASE**

The cost of securing translations for exemplification of matters before the court, copies of papers necessarily obtained for use in a case, and the cost of obtaining charts, models, photographs, etc., are **not** recoverable within the discretion of the taxation clerk **unless** counsel has previously secured an order authorizing the recovery of these costs. Routine copy expenses; those made for service, filing or for the convenience of counsel are **not** taxable within the discretion of the taxation clerk.



**G. DOCKET FEES UNDER 28 U.S.C. §1923**

Claims for docket fees under 28 U.S.C. §1923 must be broken down by fee.

**H. COSTS AS SHOWN ON MANDATE OF COURT OF APPEALS**

Fed. R. App. P. 39(e)(1)-(4) outlines costs on appeal that are taxable in the District court for the prevailing party once a mandate is issued.

**I. COMPENSATION OF COURT-APPOINTED EXPERTS**

Under 28 U.S.C. § 1920(6), the “[c]ompensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation serviced under [28 U.S.C. §] 1828” may be taxed.

When the Court appoints an expert or interpreter, the Court may direct one or more of the parties to compensate the expert or interpreter and ultimately order the compensation paid to be taxed as costs or the Court may direct that the taxed costs be used to reimburse the Administrative Office of the United States Courts for providing such special interpretation services.

**J. COMPENSATION OF INTERPRETERS AND COSTS OF SPECIAL INTERPRETATION SERVICES UNDER 28 U.S.C. §§ 1827 and 1828**

Where the prevailing party procured interpretation or translation services without prior Court approval, costs will be assessed only for those expenses necessarily incurred. The party requesting costs has the burden of showing that the interpretation or translation services were necessary at the time the services were received.

**K. OTHER COSTS**

**1. Taxable**

- a. Bond premiums.
- b. Court ordered video and audio recordings of depositions.  
(Also see Section C for All or Any Part of the Transcript  
Necessarily Obtained for Use in the Case).

- d. ASCII data.

**2. Not Taxable**

- a. Attorney fees incurred in attending depositions, conferences and trial, as well as expenses incurred by investigations.
- b. Word processing and typing charges which are presumably incidental to attorney's services.
- c. Computerized legal research charges.
- d. Paralegal expenses.
- e. Prejudgment and post-judgment interest.
- f. Mediation fees.
- g. Fees for postage (other than summons, subpoenas and court reporter charges), delivery and notary fees.
- h. Long distance telephone calls and fax charges.
- i. Accountant's expenses.
- j. Office overhead.